

UNITED STATES DISTRICT COURT

for the
Southern District of Indiana**SEALED**United States of America
v.

GERALD HOYE

Case No.
1:20-mj-340*Defendant(s)***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 09.20.2018 to 03.20.2020 in the county of Marion in the
Southern District of Indiana, the defendant(s) violated:*Code Section**Offense Description*

Count 1: 18 U.S.C. 2251(a) and (e)

Sexual Exploitation / Att. Sexual Exploitation of a Minor

Count 2: 18 U.S.C. 2422(b)

Coercion / Enticement

Count 3: 18 U.S.C. 2252(a)(2)

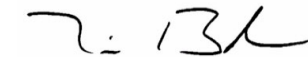
Receipt of Visual Depictions of Minors Engaged in Sexually Explicit Conduct

This criminal complaint is based on these facts:

See Attached Affidavit

☒ Continued on the attached sheet.*Complainant's signature*

Laura K. Smith, T.F.O. USSS

*Printed name and title*Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephonic (reliable electronic means).Date: 03/24/2020City and state: Indianapolis, INTim A. Baker
United States Magistrate Judge
Southern District of Indiana

SEALED

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Laura Smith, being duly sworn, hereby depose and state as follows:

1. **Affiant:** I am a Detective in the Cybercrime Unit of the Indianapolis Metropolitan Police Department (IMPD). I am also a cross-designated Task Force Officer with the United States Secret Service.
2. **Experience:** I have over 22 years of law enforcement experience. I have investigated State and Federal criminal violations related to high technology or cybercrime, child exploitation, and child pornography. I have written numerous search warrants involving internet crimes against children cases and participated in their execution.
3. **Training:** I have attended and presented at the National Crimes Against Children Conference and attended numerous classes related to investigating the online sexual exploitation of children. I am a member of the Indiana Internet Crimes Against Children (ICAC) Task Force, which includes federal, state, and local law enforcement agencies. I am currently assigned to operate in an undercover capacity on the internet to identify and investigate persons attempting to exploit or solicit sexual acts with children or trafficking in child pornography. As a Task Force Officer, I am authorized to investigate violations of the laws of the United States and to execute warrants issued under the authority of the United States.
4. **Information provided:** The statements in this affidavit are based on information obtained from my observations and communications, as well as information learned from other law enforcement officers and witnesses. Because this affidavit is being submitted for the limited purpose of securing an arrest warrant and criminal complaint, I have not included each and every fact known to the investigators concerning this investigation. I have set forth only the facts that

I believe are necessary to establish probable cause that **Gerald Hoyer (HOYE)** committed criminal offenses.

5. **Requested action:** I make this affidavit in support of an application for an arrest warrant and criminal complaint charging GERALD HOYE with the following offenses:

A. **Count 1:** Sexual Exploitation and Attempted Sexual Exploitation of a Minor, in Violation of 18 U.S.C. §§ 2251(a) and (e),

B. **Count 2:** Coercion or Enticement of a Minor, in violation of 18 U.S.C. § 2422(b), and

C. **Count 3:** Receipt of a Visual Depiction of a Minor Engaged in Sexually Explicit Conduct, in violation of 18 U.S.C. § 2252(a)(2).

6. **Statutory Authority:**

A. **Sexual Exploitation / Attempted Sexual Exploitation of a Minor (18 U.S.C. §§2251(a) and (e)):** This statute provides that “Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or

foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed. It is also a crime to attempt to commit this offense.

B. **Coercion and Enticement (18 U.S.C. § 2422(b)):** Under the United States Code, it is unlawful for a person to use the mail or any facility or means of interstate or foreign commerce to knowingly persuade, induce, entice, or coerce any individual who has not attained the age of 18 years, to engage in any sexual activity for which any person can be charged with a criminal offense, or attempt to do so. This statute incorporates both state and federal law in determining whether the underlying sexual activity is a criminal offense, including the federal law prohibiting the sexual exploitation of a child and attempts to do so (18 U.S.C. § 2251(a) and state law prohibiting statutory rape (Miss. Code Ann. § 97-3-65) and felony carnal knowledge of a juvenile (Louisiana Revised Statutes 14:80).

C. **Receipt of Visual Depictions of Minors Engaged in Sexually Explicit Conduct:** This investigation concerns alleged violations of 18 U.S.C. § 2252, which generally prohibits a person from knowingly transporting, shipping, receiving, distributing, reproducing for distribution, or possessing any visual depiction, where the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and such visual depiction is of such conduct; and where the visual depiction was either mailed or shipped or transported in interstate or foreign commerce by any means, including by computer, or when such visual depiction was produced using materials that had traveled in interstate or foreign commerce.

D. **Statutory Rape** is a violation of the Mississippi Annotate Code, and the statute prohibits sexual intercourse with a child who is at least fourteen (14) but under sixteen (16) years of age, is thirty-six (36) or more months younger than the person, and is not the person's spouse. Neither the victim's consent nor the victim's lack of chastity is a defense to a charge of statutory rape. Miss. Code Ann. § 97-3-65 (1)(a) and (2). Upon conviction for statutory rape, a defendant shall be sentenced to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than \$10,000 (Miss. Code Ann. § 97-3-65 (3)(b)).

E. **Felony Carnal Knowledge of a Juvenile:** Felony carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater (La. Stat. Ann. § 14:80 (A)). "Sexual intercourse" means anal, oral, or vaginal sexual intercourse (La. Stat. Ann. § 14:80 (B)).

7. **Minor Victim 1:** The pseudonym "MINOR VICTIM 1" represents a child who was 14 and 15 years old at the time of the alleged conduct. At all relevant times, she lived in Mississippi. This Affiant believes that Hoyer travelled from the Southern District of Indiana to Mississippi in or after the fall of 2019, and during that time, the Defendant engaged in sexually explicit conduct with Minor Victim 1. That conduct occurred in Mississippi and / or Louisiana, in violation of Mississippi law prohibiting Statutory Rape and / or Louisiana law prohibiting Carnal Knowledge of a Juvenile.

8. **Definitions:** The following definitions apply to this Affidavit:

A. “Minor” means any person under the age of eighteen years. *See* 18 U.S.C. § 2256(1).

B. “Sexually explicit conduct” means actual or simulated (a) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between persons of the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any person. *See* 18 U.S.C. § 2256(2).

C. “Visual depictions” include undeveloped film and videotape, and data stored on computer disk or by electronic means, which is capable of conversion into a visual image. *See* 18 U.S.C. § 2256(5).

D. The “Internet” is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices communicating with each other are in the same state.

E. “Facebook” refers to the for-profit corporation and online social networking service based in Menlo Park, California. Its website was launched on February 4, 2004. Since 2006, anyone in general aged 13 and older has been allowed to become a registered user of the website. After registering to use the site, users can create a user profile with a name that the user selects, add other users as “friends”, exchange messages, post status updates and photos, share videos, and receive notifications when others update their profiles. Users may also send private messages to each other through a feature called “Facebook Messenger.” Facebook Messenger is an instant messaging

service and software application which provides text and voice communication. (Source: Wikipedia)

9. **Investigation:** On March 20, 2020, this Affiant was assigned a child exploitation investigation which consisted of information received from the National Center of Missing and Exploited Children. The National Center for Missing and Exploited Children (NCMEC) alerts law enforcement to reports of sexual exploitation of children on the Internet. NCMEC was established in 1984 as a private, nonprofit 501(c)(3) organization. NCMEC provides services nationwide to families and professionals relating to preventing the abduction and sexual exploitation of children. Pursuant to its mission and congressional authorization (see 42 U.S.C. § 5773), NCMEC operates the CyberTipline and the Child Victim Identification Program to provide assistance to law enforcement in its efforts to identify victims of child pornography and child sexual exploitation. NCMEC also works with law enforcement, Electronic Service Providers, electronic payment service providers and others in their efforts to reduce the distribution of child sexual exploitation images and videos on the Internet. NCMEC forwards reports of possible child sexual exploitation to law enforcement for its independent review and analysis. I have investigated numerous CyberTipline Reports from NCMEC. I find the information received from NCMEC to be reliable.

10. The original information received from NCMEC showed that on October 11, 2019, Facebook submitted a CyberTipline Report regarding two sexually explicit images which were sent by a suspected minor account to an adult account. On December 30, 2019, Facebook captured, documented, and reported to NCMEC a text/chat-based conversation between the two Facebook users. Facebook submitted an additional report on January 2, 2020 with additional information.

11. The information provided by Facebook to NCMEC included conversations from Facebook Messenger between an account belonging to a 14- and 15-year-old girl (she had a birthday during the course of the communication) using the name of “User Name 1,” which is a pseudonym for the actual name on the account, which name is known to law enforcement. “User Name 1” provided a date of birth of xx-xx-2003 and a phone number of 601-xxx-xxxx. “User Name 1” has been identified as Minor Victim 1 through my communication with law enforcement personnel in Mississippi and open source research.

12. Minor Victim 1 was communicating with a user by the user name of “Gerald Hoye.” “Gerald Hoye” used a date of birth of xx-xx-1978 and a phone number of 317-xxx-xxxx (known to this Affiant but redacted). The date of birth provided to Facebook would have made “Gerald Hoye” 41 years of age and he was identified as a male. The online conversations and files provided by Facebook took place between September 18, 2018 and October 4, 2019.

13. From the Facebook communications contained in the NCMEC Cyber Tipline Report, this Affiant believes that “User Name 1” / Minor Victim 1 and “Gerald Hoye” are related (relationship known to this Affiant). Further, “User Name 1” / Minor Victim 1 and “Gerald Hoye” engaged in sexual intercourse and/or other sexual conduct.

14. In the conversations, “Gerald Hoye” (Hoye) did persuade, induce, entice, and coerce Minor Victim 1 to send pictures to him on several occasions after he asked her how old she was. He promised her money and told her in explicit terms exactly what type of images he wanted her to send.

A. On September 20, 2018, Hoye sent, “How old are you.” Minor Victim 1 sent “14and yeah I clean up and cook sometimes.”

i. Hoye provided Minor Victim 1 for a phone number for himself:
317-503-xxxx (redacted by known to this Affiant).

ii. In these communications, Minor Victim 1 asked her male relative, Hoye, for some money for something that she needed for school because her parents could not give her the money.

B. On May 13, 2019, Hoye sent, "How old are you." Minor Victim 1 sent "15."

C. On May 30, 2019, Hoye wrote "You going to show me send me a picture," "you know what kind o want" and "Send them so I can see." Minor Victim 1 sent two sexually explicit images showing the lascivious display of female genitals to Hoye via Facebook messenger. The images are identified as images 9i0acnwarqkok04w61552972_467092897427245_4713105937341087744_o.jpg and b670wbiiuhkcwg4k61643293_346426052682920_9135367650153594880_n.jpg in the NCMEC Cyber Tipline Report and they have been viewed by this Affiant. When Hoye wrote "That's not even you . . . You got that off line smh lol," Minor Victim 1 responded "I promise you I don't even believe in fake pics im not ashamed of my body period . . ."

D. On that same day, Hoye continued his request to Minor Victim 1, writing "Let me see you that pussy your tits and your face" and "Open it up for me let me see your clit". He continued "I tell you what. Send me a good clear full body picture of you naked with your face in it I will send you eighty" and "Deal? And we can talk about letting me put this dick in you when you want more money." Minor Victim 1 was 15-years-old at the time of this request.

15. Ten additional images and videos were provided with the NCMEC CyberTipline Reports. The images and videos of Minor Victim 1 show the exposed vaginal area and/or Minor Victim 1 engaged in sexually explicit conduct.

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- c86qbcnc0ls8wocs64617817_407024040021713_3166353854589566976_n.jpg

16. **Conversations between Hoye and User Name 1 / Minor Victim 1:** Facebook sent NCMEC relevant portions of the conversations between Hoye and Minor Victim 1:

A. The following conversation occurred between Hoye and User 1 / Minor Victim 1 on March 14, 2019.

Gerald Hoye - 03/14/2019: When I was a cop □ it's this dude in court room 11 that was cool. Just act like a player and... I meet his girl. She like a damn super model. I was working security for one of the gay night clubs cuz they pay more. Please no fights. This dude was hug up with a guy. I had to say something. He said he like both sides. Please his girl has a girl. I smh □ too much going on in that life.

Gerald Hoye - 03/14/2019: I told your mom and her mom! I would move you all into my house in Indianapolis Indiana. Make sure everyone feed go to school until they get jobs and or get a place or stay with me until when ever. None of them wants to come.

This Affiant knows that Gerald Hoye was employed by the Indianapolis Police Department as a Police Officer. On at least one other occasion, he told Minor Victim 1 that he had been a police officer.

B. Referencing the earlier conversation from May 30, 2019, when Hoye told Minor Victim 1 to send pictures to him, she asked "wat kind," and he responded "You know what kind o want. . . . Send them so I can see." Minor Victim 1 responded "Im done" and then send the two sexually explicit images earlier described. She also sent a cropped image of an apparent female in underwear and told Hoye "And delete them." Hoye responded "Let me see you that pussy your tits and your face," "And I will definitely deleted," and "Who you letting put some dick in you." Minor Victim 1 told Hoye "Nobody im a virgin," to which Hoye replied "Tell the truth someone getting that pussy," "Open it up for me let me see your clit," "You going to let me play with your pussy," "You know you got my dick hard."

C. Hoye continued to tell Minor Victim 1 what he wanted, “I want to rub it in your sweet pussy and hold that ass” and he asked her “You going to let me slide this dick in you” Minor Victim 1 responded “Uhhhhh idk” and “Can ww not talk about this but thats mt fee.” Hoye persisted, asking “What you want 65” and telling Minor Victim 1 “And you know I am going to take care of you;” however, he told her what she would have to do in order for him to take care of her: “So I do want to know if you going to let me play with your tight clean pussy . . . Just tell me . . . I tell you what. Send me a good clear full body picture of you naked with your face in it I will send you eighty . . . Deal? And we can talk about letting me put this dick in you when you want more money.”

D. Based on the communication between Hoye’s account and Minor Victim 1’s account, the Affiant believes that Hoye engaged in sexually explicit conduct with Minor Victim 1 around September of 2019. During messages sent by Hoye to Minor Victim 1 on September 28, 2019, Hoye admitted to engaging in sexual conduct with Minor Victim 1 including vaginal intercourse and oral-vaginal contact. Minor Victim 1 told Hoye that she did not want him to put his mouth on her vagina. Hoye told her, using Facebook Messenger “You going to ride this dick . . . Don’t be trying to pimp your uncle. Now.” On September 29, 2019, Minor Victim 1 told Hoye, using Facebook Messenger, that she did not want to engage in sexual conduct with him, but Hoye attempted to persuade, induce, entice, and coerce her to engage in sexually explicit conduct, writing “Please it’s my pussy. You have to know daddy can punish you.” During this time, Minor Victim 1, who lived in Mississippi, also sent messages on Facebook to a friend of hers indicating that she was staying in a hotel in Louisiana with Hoye and his wife.¹

¹ For this reason, the Government has alleged that the sexually explicit conduct occurred in violation of both Mississippi and Louisiana law.

17. **Search Warrant to Facebook:** This Affiant has submitted a search warrant to Facebook for the account of “Gerald Hoyer” but has not received the results of that warrant.

18. **Identification of “Gerald Hoyer”:** A data base search showed that the phone number associated with the account of “Gerald Hoyer” belonged to Gerald Hoyer, DOB xx-xx-1978, who resided at 5443 Milroy Road., Marion County, Indianapolis, Indiana (“TARGET ADDRESS”). Indiana Bureau of Motor Vehicles records also provided a photograph of Gerald Hoyer and listed the “TARGET ADDRESS” as his residence. The “TARGET ADDRESS” is located in the Southern District of Indiana.

19. **Identification of “User Name 1”:** This Affiant also conducted a data base search to identify “User Name 1.” NCMEC provided Facebook user data for the minor and provided a possible location in Rolling Fork, Mississippi. This Affiant contacted the Sharkey County Sheriff’s Department on March 20, 2020 and learned that FEMALE 1 currently resides in Cary, Mississippi with another relative.

20. **Preliminary Interview with Minor Victim 1:** On March 23, 2020, law enforcement conducted an interview with Minor Victim 1, a 15-year-old female who lives in Mississippi. Minor Victim 1 indicated that the “User 1” account was her Facebook account. Hoyer was a biological relative and was in a position of trust with respect to Minor Victim 1. Hoyer communicated with her on Facebook. Law enforcement also spoke to a relative of Minor Victim 1 who reported that Hoyer has been to Mississippi several times in the past few months, as recent as January/February of 2020. It was reported that Minor Victim 1 has not been to Indiana, and this Affiant believes, based on information presently known, that unlawful sexual conduct occurred while the Defendant travelled outside of Indiana, in Minor Victim 1’s home state of Mississippi and / or in Louisiana, where she told a friend she was staying with Hoyer and his wife

in a hotel on September 29, 2019. An in-depth interview with her will occur in the upcoming days, as one can be scheduled.

21. **Search Warrant:** On March 22, 2020, this Affiant presented a search warrant and search warrant affidavit for the TARGET address, the person of Gerald Hoye, and his registered vehicle to Marion County Commissioner John Boyce, who then granted the search warrant under cause #49G24-2003-MC-0011886. After checking for Hoye at the TARGET ADDRESS, Hoye's vehicle was present, but Hoye did not appear to be there. This Affiant then asked for assistance from the US Marshals service. A search warrant was then requested to establish a pen register and trap/trace for the AT&T mobility cellular phone associated with HOYE, 317-xxx-xxxx (redacted but known to this affiant). The search warrant was granted by Marion County Commissioner Jennifer Haley under cause #49G21-2003-MC-011914.

22. **AT&T Mobility records:** The subscriber information for 317-xxx-xxxx (redacted but known to this affiant) return to Gerald Hoye with an address of 5443 Milroy Road, Indianapolis, Indiana 46216, with an email address of GHOYE78@xxxxx.com (redacted but known to this affiant). This is the same email address associated with the Facebook account "Gerald Hoye," which was reported by Facebook in the NCMEC CyberTipline reports. As of March 23, 2020, the location information for the cellular phone is showing an address near Chicago, Illinois. Other locations associated with the phone show that HOYE has travelled around the Midwest since February of 2020.

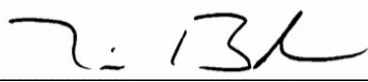
23. **Interstate and Foreign Commerce:** Facebook Messenger and Facebook, Inc. operate using the Internet, a means and facility of interstate and foreign commerce. Facebook is headquartered in California. The Defendant's conduct was in and affecting interstate and foreign

commerce, including his travel to Mississippi, where he engaged in sexually explicit conduct with Minor Victim 1, in violation of Mississippi law.


Task Force Officer Laura Smith
United States Secret Service

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephonic (specify reliable electronic means).

Date: 3/24/2020


Tim A. Baker
United States Magistrate Judge
Southern District of Indiana